

Boulder Creek Restoration Project

Native American Rights & Interests Report

Prepared by:
Beth Bigelow
Archaeologist

for:
Bonners Ferry Ranger District
Idaho Panhandle National Forests

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Introduction

This document details the analysis and potential effects on issues of concern as identified by tribal governments, staff, and communities about the project and various alternatives proposed for the Boulder Creek Restoration Project on the Bonners Ferry Ranger District, Idaho Panhandle National Forests (IPNF). This information comes to the agency through several levels of tribal consultation including information provided through Tribal government to Federal government consultation; and staff to staff consultation, collaboration, and coordination.

Relevant Laws, Regulations, and Policy

Regulatory Framework

Land and Resource Management Plan

The 2015 Idaho Panhandle National Forests Land and Resource Management Plan (LRMP) provides standards and guidelines for timber restoration and addressing Native American Rights and Interests (see Attachment A - 2015 Forest Plan Forest-wide Consistency). The LRMP tiers to the laws and corresponding Forest Service manual direction as it sets forth resource management goals, objectives, and standard outlined below.

Desired Condition

The National Historic Preservation Act (NHPA, as amended), the American Indian Religious Freedom Act (AIRFA), and the National Environmental Policy Act (NEPA) as well as various other laws, Executive Orders, regulations, and Forest Service manual direction require that agencies consult with culturally affiliated tribes. Federal land managers are responsible for this consultation and coordination with tribal governments in relation to potential affects to aboriginal lands and resources, potential affects to tribal treaty rights, and in the protection and enhancement of significant aboriginal heritage resources. These can include, but would not be limited to: access to areas on the landscape that allow for the continuation of community and culture (traditional lifeways); management and impacts to resources of importance to the tribe and their respective communities; those issues addressed specifically within Treaties signed between the tribal government and the Federal government; protection of aboriginal archaeological sites, districts, and collections eligible to the National Register of Historic Places (NRHP); and access to and protection of Traditional Cultural Properties (TCPs).

Based on these directions, the immediate and long-term foreseeable desired future conditions would be to implement actions that would not negatively impact the tribes' access to areas and resources of importance to continued lifeways, within reserved Treaty Rights, or of spiritual importance. Examples of "access" in this instance could refer to physical access, longevity of needed resources, and potential collaboration on resource stabilization and restoration actions both tribal and federal. Along with these issues is the on-going concern of maintaining confidentiality on those issues stated by the tribes as sensitive.

Also of concern is the immediate and long-term desired future condition of continued collaboration and communication between the Forest Service and the multiple tribal governments, staff, collaborative groups, and communities to maintain an open and honest dialogue for the benefit of the resources, the tribal communities, the Forest Service, and the general public.

Federal Law

National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. 470), as amended in 1992, requires agency officials to consult with Indian tribes concerning the effects of undertakings on historic properties of traditional and cultural importance to Indian tribes.

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) and the Council on Environmental Quality (CEQ) implementing regulations at Title 40 of the Code of Federal Regulations, parts 1500-1509 (40 C.F.R. § 1500-1509) require Federal agencies to invite Indian tribes to participate in the scoping process for projects and activities that affect Indian tribes and requires NEPA documentation.

American Indian Religious Freedom Act (AIRFA) of 1978 requires that federal agencies consider the impacts of their projects on the free exercise of traditional Indian religions.

The Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701) requires coordinating of land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes.

National Forest Management Act (NFMA) of 1976 (16 U.S.C. 472 et seq.). Regulations implementing the NFMA direct the Forest Service to consult with and coordinate forest planning with Indian tribes.

Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), (25 U.S.C. 3001 et seq.). Permits for the excavation and/or removal of “cultural items” protected by NAGPRA require tribal consultation, as do discoveries of “cultural items” made during activities on Federal or tribal lands. The Secretary of the Interior’s implementing regulations are at 43 C.F.R. § 10.

Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa et seq.), as amended, establishes a permit process for the excavation or removal of any archaeological resources from Federal and Indian lands.

Executive Orders

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), November 6, 2000 directs Federal agencies to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, etc.

Executive Order 13007 (Indian Sacred Sites) requires that federal agencies consider the impacts of their decision-making as it relates to heritage.

Environmental Justice EO 12898 of February 11, 1994 (Minority Population Equity) requires that federal agencies identify and address actions that would disproportionately adversely affect minority and low-income populations’ human health or environment.

Treaty Rights and the Federal Trust Responsibility

1855 Hell Gate Treaty Ratified by Congress, signed by President James Buchanan, and proclaimed on April 18, 1859. The treaty was negotiated and signed by representatives of three tribes (Victor (Flathead), Alexander (Pend d’Oreille), and Michelle (Kootenai), and fifteen others) and Isaac I Stevens, territorial governor of Washington.

Treaty Rights In 1859 the United States finalized the 1855 Hell Gate Treaty with the three Indian tribes who utilized the area now comprising the northern zone of the Idaho Panhandle National Forests. Under the treaty, the Indian tribes ceded significant portions of their aboriginal lands to the United States. Generally speaking, the tribes’ reserve lands (reservation) under the treaty and retained certain rights to

hunt, fish, graze, and gather on the lands ceded to the United States. The rights retained on ceded lands are known as “off-reservation treaty rights” or “other reserved rights”.

Trust Responsibility Trust responsibility arises from the United States’ unique legal and political relationship with Indian tribes. It derives from the Federal Government's consistent promise, in the treaties that it signed, to protect the safety and well-being of the Indian tribes and tribal members in return for their willingness to give up their lands.

Other Guidance or Recommendations

USDA Departmental Regulation 1350-002, Tribal Consultation, Coordination, and Collaboration (DR), published January 18, 2013. The Regulation directs the USDA and its agencies to provide federally recognized Indian tribes the opportunity for government-to-government consultation and coordination in policy development and program activities which have direct and substantial effects on their Tribe. Further, the agency is responsible to report on “...the outcome(s) of the consultation, including follow-up commitments, any agreements or points of disagreement...How the results of the consultation were considered in any decision-making process by the agency and whether they were incorporated or rejected in the final decision.”

Planning Rule (36 C.F.R. § 219). The Forest Service’s 2012 Planning Rule provides direction for National Park Service (NPS) land management planning under NFMA. Section 219.4 of the rule requires opportunities for public and Tribal participation and coordination throughout the planning process.

Culture and Heritage Cooperation Authority of 2008, 25 U.S.C. 3056(b)(A) requires the Forest Service to consult with affected Indian tribes before releasing culturally sensitive information.

National Forest System – Title VIII, Subtitle B of the Food, Conservation, and Energy Act of 2008 was codified as the Cultural and Heritage Cooperation Authority (25 U.S.C. Chapter 32A) and includes provisions for reburial of human remains and cultural items, temporary closure for traditional and cultural purposes, forest products for traditional and cultural purposes, and prohibition on disclosure.

FSM 1500 – External Relations; Chapter 1560 – State, Tribal, County, and Local Agencies; Public and Private Organizations

FSM 2300 – Recreation, Wilderness, and Related Resource Management; Chapter 2360 – Heritage Program Management

36 C.F.R. § 233 - Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes

36 C.F.R. § 800 - Protection of Historic Properties (Amended August 5, 2004) regulates the application of the NHPA.

USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites, December 6, 2012, recognizes many authorities that Forest Service personnel may or must use to protect the cultural resources and sacred sites of Native Americans, also increasing the level of protection and access to Indian sacred sites.

The Rocky Mountain Region (R1) of the Forest Service, the Advisory Council on Historic Preservation (ACHP), and the Idaho State Historic Preservation Officer (SHPO), signed in 2004 a programmatic agreement which outlines specific procedures for the identification, evaluation, and consultation on eligibility status in the management of cultural resources on National Forest system lands under the National Historic Preservation Act (NHPA).

Topics and Issues Addressed in This Analysis

Purpose and Need

- Manage the forest stands in the project area to maintain or improve their resilience to disturbances such as drought, insect and disease outbreaks, and wildfires.
- Forest fuel accumulations are high and continuous across the landscape, conditions which often contribute to large severe wildfires.
- At risk from fire assets include the historic resources in the vicinity of the Boulder City Ghost Town and the small community water systems north of the project area.
- Achieve access management standards for the BMU by increasing grizzly bear core habitat and reducing the Total Motorized Route Density
- Other objectives include: maintaining and improving recreational sites and experiences, maintaining aquatic ecosystems, treating noxious weeds, and promoting the persistence and stability of wildlife habitat

Resource Issues of Concern (Resource Indicators and Measures)

Resource issues of concern were defined through tribal consultation as part of the trust responsibility between the Forest Service and the tribal governments under the authorities as defined above. Resource indicators and measures for those resource issues of concern are defined through coordination and collaboration with the affected tribe(s).

Resource Issue of Concern 1 – Tribal Heritage Resources/Traditional Cultural Properties:

Planned activities within the project area could have short-term or long-term adverse effects to areas of tribal concern in relation to Traditional Cultural Properties, areas of traditional lifeways resource acquisition, and archaeological/heritage resources.

Resource Issue of Concern 2 - Reforestation:

Planned reforestation activities within the project area should include a Whitebark Pine reforestation component.

Methodology

Each resource issues of concern as identified through tribal consultation have been analyzed by the appropriate individual resource specialist under each of the alternatives. The tribes' concerns are then addressed in relation to those analyses to determine if the concerns were addressed and at what level.

Information Sources

Analyses of "resource issues of concern" include tribal staff and community members and the forest service specialist reports specific to the individual tribally defined concerns (see references).

Environmental Consequences

Alternative 1 – No Action

With no planned project activities occurring under alternative 1, the Resource Issues of Concern as defined through Tribal consultation would not arise.

With a lack of management and restoration activities provided by this planned project, there would be a higher probability of catastrophic fire events with negative effects to plant, animal, water, and heritage resources across the landscape. Along with the potential of catastrophic fire events would be a lack of management for vegetative and wildlife ecosystem health and stability. While not defined specifically as a “Resource Issue of Concern”, the underlying and often discussed concern within Tribal consultation was explicit: overall health, need for restoration, and continued efforts for stability of the forest ecosystem for the benefit of the wildlife, vegetation, water, and heritage resources.

Alternatives 2 and 3

Project Design Features and Mitigation Measures

Each of the individual specialist reports analyzed for the two (2) Resource Issues of Concern and defined when appropriate project design criteria that address specific Resource Issues of Concern. These project design criteria would be applied to any proposed project action under Alternatives 2 and 3 as part of the proposed activities to reduce the potential of adverse effect as defined through consultation.

Required Monitoring

No monitoring has been requested for or will be required as part of Alternatives 2 or 3.

Resource Issues of Concern - Alternatives 2 (preferred) and 3

Resource Issue of Concern 1 – Tribal Heritage Resources/Traditional Cultural Properties:

The proposed activities of Alternative 2 are expected to have no direct effects on all known Traditional Cultural Properties, areas of traditional lifeways resource acquisition, and archaeological/heritage resources within the project planning area as long as the Project Design Criteria, unanticipated discovery plan, and all other requirements are followed.

Resource Issue of Concern 2 - Reforestation:

Through discussions with tribal cultural committees and tribal forestry departments, an on-going system of communication has been created to discuss for mutual scientific benefit the tribal and forest service systems of restoration and regeneration of the Whitebark Pine species.

Summary of Environmental Effects

Through the implementation of the project designs for each resource, all of the Resource Issues of Concern as defined through tribal consultation have been addressed.

Compliance with the Forest Plan and Other Relevant Laws, Regulations, Policies and Plans

All alternatives will meet the Forest Plan and all appropriate Cultural Resource laws, regulations, policies, and management direction.

Intensity Factors for Significance (FONSI) (40 CFR 1508.27(b))

Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

All areas identified by the Kootenai Tribe of Idaho and the Confederated Salish and Kootenai Tribes were addressed fully within the staff consultation, through the research and analysis that involved a mutual sharing of data and research plans, and the integration of specific design features to protect or enhance resource objectives.

With this in mind, no impact is anticipated in relation to Native American issues and concerns.

Other Agencies and Individuals Consulted

As part of Section 106 of the NHPA the Washington State Historic Preservation Officer was consulted, as were all of the tribes as listed in Attachment B.

Attachment A

2015 Forest Plan Forest-wide Consistency

Goals:

| AMERICAN INDIAN RIGHTS AND INTERESTS | | |
|--------------------------------------|----|---|
| GOAL-AI-01 | 38 | Respect Indian tribal self-government and sovereignty, honor tribal Treaty and other rights through protection or enhancement of such, and meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. Manage the Forests to address and be sensitive to traditional American Indian religious beliefs and practices. |
| | | <i>Response:</i> Several issues, concerns, resources, treaty rights, and traditional values of the Kootenai Tribe of Idaho were identified. Those issues or concerns were amenable to resolution through project design and were addressed in that manner. The Confederated Salish and Kootenai Tribes of Montana, Kalispel Tribe of Indians, the Coeur D'Alene Tribe, and Colville Tribes did not identify any issues of concern and deferred to the Kootenai Tribe of Idaho. |

Desired conditions:

| AMERICAN INDIAN RIGHTS AND INTERESTS | | |
|--------------------------------------|----|---|
| FW-DC-AI-01 | 38 | Traditional and cultural use information, as provided by federally recognized tribes, is treated with respect and integrated into natural resource management planning efforts with appropriate sensitivity to the tribe's views regarding information sharing. American Indian values are fully considered in planning proposed actions on the Forest. The Forest maintains sustainable products, uses, values, and services that contribute to the American Indians' way of life and cultural integrity. Access to traditional resources and sacred places is considered in all planning efforts. |
| | | <i>Response:</i> Specific issues of access to, utilization of, and preservation of traditional resources and sacred places were addressed during consultation, project design, and in analysis. Confidentiality of information has been maintained. This desired condition has been fully met. |
| FW-DC-AI-02 | 38 | The IPNF recognizes and maintains culturally significant species and the habitat necessary to support healthy, sustainable, and harvestable plant and animal populations to ensure that rights reserved by Tribes in treaties are protected or enhanced. The IPNF recognizes, ensures, and accommodates tribal access to the Forest for the exercise of reserved treaty rights and cultural uses. |
| | | <i>Response:</i> Planned actions have been fully reviewed by the tribal resource staff. Through collaboration, no planned actions will negatively impact tribal access to the Forest for the exercise of reserved treaty rights and/or cultural uses. This desired condition has been fully met. |

Objectives:

| AMERICAN INDIAN RIGHTS AND INTERESTS | | |
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| FW-OBJ-AI-01 | 39 | Over the life of the Plan, continued access and acquisition of forest products for traditional cultural uses by each federally recognized Tribe with historical or treaty interests in IPNF lands is cooperatively established through an agreement. |
| | | <i>Response:</i> Not relevant – not a project specific issue. |
| FW-OBJ-AI-02 | 39 | Over the life of the Plan, a cooperatively developed communication plan establishes coordination with each federally recognized tribe with historical or treaty interests in IPNF lands. |
| | | <i>Response:</i> Government to government consultation was conducted in the planning, analysis, and documentation phases of this project. |

Guidelines:

| AMERICAN INDIAN RIGHTS AND INTERESTS | | |
|---|----|--|
| FW-GDL-AI-01 | 39 | Consult with Tribes when management activities may impact treaty rights and/or cultural sites and cultural use, according to individual tribal communication plans, Consultation Protocols, or policies. |
| | | <i>Response:</i> Government to government consultation was on-going throughout the planning, analysis, and documentation phases of this project. |

Attachment B

Tribal Consultation

| Name of Tribe | Date of contact | Type of contact | Comments/Notes |
|-------------------------|-----------------|-----------------|---|
| Kootenai Tribe of Idaho | 09/16/2013 | KVRI Meeting | Project Introduction |
| | 02/13/2014 | KVRI Meeting | Project Update |
| | 03/10/2014 | KVRI Meeting | Project Update |
| | 03/17/2014 | KVRI Meeting | Project Update: access |
| | 04/07/2014 | KVRI Meeting | Project Update |
| | 06/19/2014 | KVRI Meeting | Field trip to Boulder project area |
| | 07/21/2014 | KVRI Meeting | Discussion of field trip results and needs |
| | 12/01/2015 | KVRI Meeting | Issues of funding and timeline impacts |
| | 05/12/2016 | KVRI Meeting | Project Update: review of impacts of the winter 2015-2016 flooding to the project area |
| | 06/20/2016 | Public Meeting | General project update |
| | 06/30/2016 | KVRI Meeting | Project Update: review of stands, fire history (including catastrophic fire of 1910), define purpose and need, comprehensive recreation plan, proposal of Boulder City Ghost Town interpretive area and historic walk/trails with educational components, wildlife habitat issues, economic issues, TAPS. |
| | 07/14/2016 | Project tour | Boulder Meadows Area, Boulder city Ghost Town area, old growth stands. |
| | 10/05/2016 | KVRI Meeting | Project Update: adjoining Starry Goat project in Montana, concerns with helicopter logging, issues with the historic Kootenai River Walk |
| | 10/17/2016 | KVRI Meeting | Project update: Recreation/heritage opportunities |
| | 11/21/2016 | KVRI Meeting | Project update: discussion of possible collaborative efforts with recreation and the neighboring Starry Goat project |
| | 12/9/2016 | Letter | Scoping letter provided from Forest Service. |
| | 12/13/2016 | Letter | From the KTI; Tribal Council Chair: support of the project |
| | 01/09/2017 | KVRI Meeting | Project update: review of fire history and its shaping of the environmental landscape; recreation, heritage, and education components; access, |
| | 02/16/2017 | | Project update: review of public comments, recreation, access, etc. |
| | 3/20/2017 | KVRI Meeting | Update on roads, EA progress, and timelines. |
| | 4/17/2017 | KVRI Meeting | Overview of the updates to the Forestry Committee; review purpose and need, roads summary, and timeline. |
| | 5/15/2017 | KVRI Meeting | Mary Farnsworth, Forest Supervisor and FS staff: topics: units removed from IRA, |
| | 6/19/2017 | KVRI Meeting | Update on EA timeline, |

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|---|------------------------|---|---|
| | 7/17/2017 | Government to Government Consultation Meeting | Government-to-Government Consultation between Tribal Council and FS Line Officers (Regional Forester and Forest Supervisor) at the request of the Kootenai of Idaho Tribal Councils'. Discussion involved the previously planned units' within the IRA removed from the project plan. |
| | 7/17/2017 | KVRI Meeting | Timeline update, discussion of resource area reporting, |
| | | | |
| Confederated Tribes of the Colville Reservation | 10/12/2015 | Telephone | Defer to the Kootenai Tribe of Idaho on heritage/ cultural resource issues. |
| | 12/9/2016 | Letter | Scoping letter provided from Forest Service. |
| Name of Tribe | Date of contact | Type of contact | Comments/Notes |
| | | | |
| Kalispel Tribe of Indians | 10/12/2015 | Telephone | Advise of initiation of project plans, set up meeting between FS and tribal cultural staff (NHPA/Section 106) for 11/30/2015. |
| | 11/30/2015 | Meeting | Review initial proposal, review possible tribal cultural concerns for integration into the Section 106 research and analysis, discuss needs for a FS/tribal natural resources meeting. |
| | 12/9/2016 | Letter | Scoping letter provided from Forest Service. |
| | | | |
| Confederated Salish and Kootenai Indians of the Flathead Indian Reservation | 3/11/2014 | Meeting | Review the new proposed restoration project within the Boulder area. CSKT: F. Ault and heritage staff; IPNF Pahr, Knauth; at CSKT offices |
| | 4/22/2015 | Meeting | Discussed possibilities for interpretation at BCGT. Keep THPO apprised of trail systems and provided information concerning possible survey interest areas. CSKT: M.Durglo, Sr. and heritage staff; IPNF: Bigelow, Nishek; at CSKT offices |
| | 6/1/2016 | Meeting | Discussed planned activities within the Boulder area with clarification and information from the KVRI working group. Reviewed survey design. CSKT: MRogers and heritage staff; IPNF: Bigelow, Knauth; at CSKT offices |
| | 12/9/2016 | Letter | Scoping letter provided from Forest Service. |
| | | | Defer Heritage issues to the Kalispel Tribe of Indians and the Kootenai of Idaho in this area, but wish to be kept apprised on any plans, results, or questions of eligibility of pre-contact era properties if found. |
| | 5/23/2017 | Meeting | Review of project with THPO, discussed planned activities, update on project timeline. |
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Tribal Government Contacts

Kalispel Tribe of Indians
P.O. Box 39
Usk, WA 99180
www.kalispeltribe.com

Kootenai Tribe of Idaho
P.O. Box 1269
Bonners Ferry, ID 83805
<http://www.kootenai.org/>

Confederated Tribes of the Colville Reservation
P.O. Box 150
Nespelem, WA 99155
www.colvilletribes.com

Confederated Salish and Kootenai Tribes of the
Flathead Indian Reservation
P.O. Box 278
Pablo, MT 59855
www.cskt.org

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